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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,141	08/23/2001	Steven Phillip Gologoraky	620-020us	1711
22897 7590 01/17/2007 DEMONT & BREYER, LLC 100 COMMONS WAY HOLMDEL, NJ 07733			EXAMINER LIVERSEDGE, JENNIFER L	
			ART UNIT 3692	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/17/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/938,141

Applicant(s)

GOLOGORAKY ET AL.

Examiner

Jennifer Liversedge

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 17-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 August 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/23/2001, 11/1/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

This Office Action is responsive to Applicant's amendment to application 09/938,141 filed on October 31, 2006 in response to restriction/election.

The amendment contains original claims: 1-16.

Claims 17-30 have been withdrawn.

Specification

The disclosure is objected to because of the following informalities:

Page 7, line 14 should refer to "...embodiment is described..." rather than "...embodiment in described...".

Page 9, line 21 should refer to "...winning bid(s) is/are determined..." rather than "...winning bid(s) determined...".

Appropriate correction is required.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: Figure 1, reference number 100. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement

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drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 3-6, 8 and 10-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,199,050 B1 to Alaia et al. (further referred to as Alaia).

Regarding claim 1, Alaia discloses a method of conducting an auction (column 8, lines 58-63), said method comprising:

Entering, at a data processing system, a first bid into said auction in behalf of a first bidder (Figure 8; column 3, lines 45-48);

Receiving, at said data processing system, a bid package from a second bidder (Figure 8; column 3, lines 45-48), wherein a bid variable based, at least in part, on the identity of said first bidder (column 4, lines 7-11; column 6, lines 8-9); and

Entering, at said data processing system, a second bid into said auction in behalf of said second bidder (Figure 8; column 3, lines 45-48).

Alaia does not specifically disclose where said bid package directs said data processing system to determine a bid variable. However, Alaia discloses where the bid submitter determines bid variables (column 3, lines 13-15; column 5, lines 55-67; column 7, lines 38-43 and lines 56-67; column 8, lines 58-63; column 9, lines 56-58; column 15, lines 18-48; column 16, lines 31-40). It would have been obvious to one of ordinary skill in the art at the time of the invention to have automated the method of using a processing system to determine bid variables because it would have allowed for efficient allocation and determination of bid variables, which was known, and the end result would have been the same compared to the manual method. *In re Venner*, 262 F.2d 91, 95, 1209 USPQ 193, 194 (CCPA 1958).

Regarding claim 6, Alaia discloses a method of conducting an auction (column 8, lines 58-63), said method comprising:

Entering, at a data processing system, a first bid into said auction in behalf of a first bidder (Figure 8; column 3, lines 45-48), wherein said first bid comprises a first bid variable (column 3, lines 13-15; column 5, lines 55-67; column 7, lines 38-43 and lines 56-67; column 8, lines 58-63; column 9, lines 56-58; column 15, lines 18-48; column 16, lines 31-40);

Receiving, at said data processing system, a bid package from a second bidder (Figure 8; column 3, lines 45-48), wherein a bid variable based, at least in part, on the identity of said first bidder and on said first bid variable (column 4, lines 7-11; column 6, lines 8-9); and

Entering, at said data processing system, a second bid into said auction in behalf of said second bidder (Figure 8; column 3, lines 45-48).

Alaia does not specifically disclose where said bid package directs said data processing system to determine a bid variable. However, Alaia discloses where the bid submitter determines bid variables (column 3, lines 13-15; column 5, lines 55-67; column 7, lines 38-43 and lines 56-67; column 8, lines 58-63; column 9, lines 56-58; column 15, lines 18-48; column 16, lines 31-40). It would have been obvious to one of ordinary skill in the art at the time of the invention to have automated the method of using a processing system to determine bid variables because it would have allowed for efficient allocation and determination of bid variables, which was known, and the end

result would have been the same compared to the manual method. *In re Venner*, 262 F.2d 91, 95, 1209 USPQ 193, 194 (CCPA 1958).

Regarding claim 8, Alaia discloses a method of conducting an auction (column 8, lines 58-63), said method comprising:

Entering, at a data processing system, a first bid into said auction in behalf of a first bidder (Figure 8; column 3, lines 45-48), wherein said first bid comprises a first bid variable (column 3, lines 13-15; column 5, lines 55-67; column 7, lines 38-43 and lines 56-67; column 8, lines 58-63; column 9, lines 56-58; column 15, lines 18-48; column 16, lines 31-40);

Entering, at said data processing system, a second bid into said auction in behalf of a second bidder (Figure 8; column 3, lines 45-48), wherein said second bid comprises a second bid variable (column 3, lines 13-15; column 5, lines 55-67; column 7, lines 38-43 and lines 56-67; column 8, lines 58-63; column 9, lines 56-58; column 15, lines 18-48; column 16, lines 31-40);

Receiving, at said data processing system, a bid package from a third bidder (Figure 8; column 3, lines 45-48), wherein a bid variable based, at least in part, on the identity of said first bidder and on identity of said second bidder (column 4, lines 7-11; column 6, lines 8-9); and

Entering, at said data processing system, a third bid into said auction in behalf of said third bidder (Figure 8; column 3, lines 45-48).

Alaia does not specifically disclose where said bid package directs said data processing system to determine a bid variable. However, Alaia discloses where the bid submitter determines bid variables (column 3, lines 13-15; column 5, lines 55-67; column 7, lines 38-43 and lines 56-67; column 8, lines 58-63; column 9, lines 56-58; column 15, lines 18-48; column 16, lines 31-40). It would have been obvious to one of ordinary skill in the art at the time of the invention to have automated the method of using a processing system to determine bid variables because it would have allowed for efficient allocation and determination of bid variables, which was known, and the end result would have been the same compared to the manual method. *In re Venner*, 262 F.2d 91, 95, 1209 USPQ 193, 194 (CCPA 1958).

Regarding claim 15, Alaia discloses a method of conducting an auction (column 8, lines 58-63), said method comprising:

Entering, at a data processing system, a first bid into said auction in behalf of a first bidder (Figure 8; column 3, lines 45-48);

Entering, at said data processing system, a second bid into said auction in behalf of a second bidder (Figure 8; column 3, lines 45-48);

Receiving, at said data processing system, a bid package from a third bidder (Figure 8; column 3, lines 45-48), wherein a third bid variable based, at least in part, on the identity of said first bidder and (column 4, lines 7-11; column 6, lines 8-9); and

Entering, at said data processing system, a third bid into said auction in behalf of said third bidder (Figure 8; column 3, lines 45-48), wherein said third bid comprises said

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third bid variable (column 3, lines 13-15; column 5, lines 55-67; column 7, lines 38-43 and lines 56-67; column 8, lines 58-63; column 9, lines 56-58; column 15, lines 18-48; column 16, lines 31-40).

Alaia does not specifically disclose where said bid package directs said data processing system to determine a bid variable and ignoring the identity of a second bidder in determining bid variables. However, Alaia discloses where the bid submitter determines bid variables (column 3, lines 13-15; column 5, lines 55-67; column 7, lines 38-43 and lines 56-67; column 8, lines 58-63; column 9, lines 56-58; column 15, lines 18-48; column 16, lines 31-40). It would have been obvious to one of ordinary skill in the art at the time of the invention to have automated the method of using a processing system to determine bid variables because it would have allowed for efficient allocation and determination of bid variables, which was known, and the end result would have been the same compared to the manual method. *In re Venner*, 262 F.2d 91, 95, 1209 USPQ 193, 194 (CCPA 1958). Further, Examiner takes Official Notice that it is old and well known to either use or ignore information that is made available. It would be obvious to one of ordinary skill in the art at the time of the invention that one could either use or ignore the information made available from other bidders, the motivation being how much input the bidder wanted to include in making their bid.

Regarding claims 3-5 and 10-14, Alaia does not disclose the method wherein said bid package directs said data processing system to set said second (or third) bid variables to 100% of said first (and second) bid variable, to a value that is more than

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100% of said bid value, and to a value that is less than 100% of said first (and second) bid variable or to an average determined therefrom. However, Alaia discloses where bid values are 100%, more than 100%, and less than 100% of a baseline bid and to values anywhere there in between (column 14, lines 1-9). It would have been obvious to one of ordinary skill in the art at the time of the invention to have automated the method of using a processing system to determine bid variables at, above, and below 100% of a given bid because it would have allowed for efficient determination of bid variables, which was known, and the end result would have been the same compared to the manual method. *In re Venner*, 262 F.2d 91, 95, 1209 USPQ 193, 194 (CCPA 1958).

Claims 2, 7, 9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alaia as applied to claims 1, 3, 8 and 15 above, and further in view of U.S. Patent No. 6,055,518 to Franklin et al. (further referred to as Franklin).

Regarding claims 2, 7, 9 and 16, Alaia does not disclose the method further comprising withholding, at said data processing system, the identity of said first bidder (and second bidder) from said second bidder (and third) until at least after said bid package has been received at said data processing system. However, Franklin discloses the method further comprising withholding, at said data processing system, the identity of said first bidder from said second bidder until at least after said bid package has been received at said data processing system (column 1, lines 52-53;

column 2, lines 1-3 and lines 22-25; column 4, lines 12-16; column 8, lines 63-67). It would be obvious to one of ordinary skill in the art to modify the method of conducting an auction as disclosed by Alaia but adapting the use of not disclosing bidders until at least after bids have been received as disclosed by Franklin. The motivation would be to create an environment in which bidders submit bids without knowing who it is making that is making and submitting other bids such that influence is not exerted on other bidders.

Conclusion

Any inquiry concerning this communication should be directed to Jennifer Liversedge whose telephone number is 571-272-3167. The examiner can normally be reached on Monday – Friday, 8:30 – 5 PM.

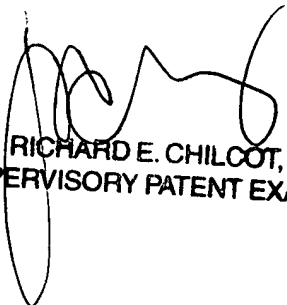
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached at 571-272-6777. The fax number for the organization where the application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jennifer Liversedge

Examiner

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RICHARD E. CHILCOT, JR.
SUPERVISORY PATENT EXAMINER